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SUBJECT: State Secrets Law: An Invitation to
Corruption and a Blight on Mongolia's Human Rights
Record

REFS: (A) 2004 Ulaanbaatar 049 and previous, (B) 2004
Ulaanbaatar 0229, (C) 2004 Ulaanbaatar 037

Sensitive but unclassified -- not for Internet
distribution.

11. (SBU) SUMMARY AND COMMENT: The World Bank, civil
society and donors, including the U.S., have long
identified the lack of transparency and citizen access
to government information as a major invitation to
corruption and have encouraged the Government of
Mongolia and worked with civil society and legal
reformers to repeal or significantly amend the State
Secrets Law, to de-criminalize the offense of libel,

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and to implement a Freedom of Information Act. The
State Secrets Law is among the most restrictive and
punitive in any post-communist country. It extends the
definition of "state secret" to not only national
security interests but also to maps finer than a
1:200,000 scale, to statistics on the number of
prisoners, to basic economic and census data, to the
identity of shareholders in private companies, to
audits of state owned companies, to access by citizens
to state archives. On one level, it enables "petty"
corruption by handing bureaucrats the power to levy
fines on (i.e., solicit extra-legal fees from) citizens
and businesses without having to share with the victim
the text of the law or regulation allegedly violated.
On another level, however, it has been used to harass
and convict people whose views or activities were
considered by the government, or even by individual
ministers, to be inimical to its authority or
interests. Three persons, jailed in 2003 and 2004 for
"revealing state secrets," were released in recent
months; their stories are now coming to light and
provide insights into how the Law has been abused. One
was a lawyer who had gone to the media with his
client's allegations of torture and coercion to testify
falsely; another was his client, who had been abducted
by Mongolian intelligence agents from France; and the
third, a former head of the intelligence agency who
angered then Justice Minister (and current Speaker)

Nyamdorj by allegedly leaking material that proved the minister was a "spy for China." Their experiences with the legal and prison systems also serve to confirm the conclusions of the UN Special Rapporteur on Torture's visit to Mongolian in June 2005 and of the soon-to-be-released report by the Mongolian National Human Rights Commission (septel) that lack of due process, torture and poor prison conditions continue to be human rights concerns. END SUMMARY AND COMMENT.

State Secrets Law: Nothing Escapes

12. (U) In December 2004, historian and researcher Sergey Radchenko wrote, "free access to information is impeded in Mongolia by the existing legislation on state secrets (the April 1995 Law on State Secrets and the January 2004 List of State Secrets) which in sum set up such far reaching restrictions on access to government records in Mongolia as to make it possible for virtually anything to be classified as 'secret' and hidden from the public view for an indefinite period. Existing restrictions contradict the spirit of the Mongolian government's commitment to openness. Unnecessary secrecy breeds irresponsibility on the part of government officials. The lack of transparency leads to corruption. Failure to open up past government records speaks to the unwillingness of the Mongolian government to face up to the former policies." Radchenko compared the law's provisions to state secrets legislation in twelve ex-Soviet Union countries, and found Mongolia's to be the most restrictive. (Comment and Note: Both laws were passed by parliaments dominated at the time by the former communist Mongolian Peoples Revolutionary Party (MPRP).

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Radchenko was at the time of his study a visiting faculty member at the National University of Mongolia; he is currently a visiting professor of history at Pittsburgh State University.)

13. (U) An August 2005 "Assessment of Corruption in Mongolia" funded by USAID and endorsed by the Ambassador, noted, "(T)he most critical shortcomings in the environment for fighting corruption in Mongolia are the lack of transparency surrounding nearly all government activities and the near absence of the public in substantive policy discussions and oversight of government. ... Archaic secrecy laws still inhibit and curtail implementation of laws that guarantee freedom of speech, press and association. Authorities remain fearful of information and, thus, reticent to comply with citizens, media, or civil society organizations' requests for information. ... There is no easy access to government documents. Simple records, such as parliamentary debates, are treated as 'secret,' and obtaining them becomes a complicated operation."

Case Histories of Abuse of the State Secrets Law, Lack of Due Process, and Torture

14. Three men were convicted in 2003-2004 under Article 87 of the Criminal Code, which provides up to eight years imprisonment for someone who reveals state secrets entrusted to them by virtue of their job. The

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first man was General J. Baatar, a head of the General Intelligence Agency (GIA) during the Democratic Coalition government period in the late 1990s. Sentenced to seven years of "strict imprisonment" in January 2004 for revealing state secrets, Baatar was given a presidential pardon just before Mongolian New

Years holiday in late January 2006. He is now reported to be in the Mongolian countryside. He has said that, since his release, he has sent information about his treatment to international human rights organizations.

15. (U) Baatar was convicted of providing a confidential GIA dossier to L. Gundalai, one of the

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four non-MPRP members of parliament between 2000-2004. On May 19, 2003, MP Gundalai held a press conference at which he announced that he had "Top Secret" material, provided by an unknown man, that alleged that then Justice and Home Affairs Minister (and Speaker since July 2005) Nyamdorj was a spy for the Chinese. Gundalai himself was subsequently investigated by the GIA and police for revealing state secrets. In January 2004, the parliament voted against a petition by the State Prosecutor to waive MP Gundalai's immunity from prosecution, but permitted the prosecutor to continue the investigation (ref b). Gundalai was re-elected to parliament in June 2004 and remains immune from prosecution. (Comment: To our knowledge, there has been no further attempt to pursue the case against him. Gundalai became the minister of health in the new MPRP-led government in January 2006. End comment.)

16. (U) In a newspaper interview published March 1, 2006, Baatar recalled that GIA agents -- headed by a former subordinate he knew well -- broke into his house the day after Gundalai's May 2003 press conference and forcibly arrested him. After five days in prison, a judge freed him because there had been no arrest warrant. Baatar told the newspaper he had decided to flee his apartment in the middle of the night soon thereafter because he feared for his life. On September 5, 2003, GIA agents arrested him while he was in the apartment of a son-in-law of former president Ochirbat. Until he was taken to trial in January 2004, Baatar states he was kept in Tov Aimag prison in a lightless, dank, bedless cement cell with no running water. During that time, he was let outside twice, for

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3-5 minutes. He was given two cupfuls of water a day. The food was inedible bread and soup made from horse offal. Conditions improved briefly during visits to him by a member of the National Human Rights Commission, then reverted after the commissioner left, he states. Any criticisms about conditions made to the commissioner resulted in beatings and additional pressure. The former GIA head said he was allowed almost no contact with his lawyer. Baatar told the newspaper he was 165-176 pounds when he entered Tov Aimag prison, and 134 pounds four months later. After a closed trial in the Gants Hudag detention facility near Ulaanbaatar, Baatar said he was sent to Zaisan prison to serve his sentence. He shared a cell with a dozen other prisoners. Among other problems, those in the cell were given bathroom breaks lasting 30 seconds to a minute, in a toilet with only two commodes.

Jailed: A Lawyer and His Client

17. In June 2005, the UN Special Rapporteur on Torture, Manfred Nowak, visited Mongolia at the invitation of the National Human Rights Commission. The excerpt below from Nowak's December 2005 report describes the cases of two men, L. Sanjaasuren and D. Enkhbat. Both were convicted in November 2004 of revealing state secrets. In August 2005, Sanjaasuren (who was regarded

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by Amnesty International as a prisoner of conscience) was released from prison in accordance with standard procedures for paroling prisoners who have served half

their sentences. In February 2006, Enkhbat was released because of ill health, and is reported to be in an Ulaanbaatar hospital.

Begin excerpt from the Special Rapporteur's report:

"On about 15 May 2003, Enkhbat Damiran, who was seeking asylum in France at the time, was beaten by officers of the General Intelligence Agency (GIA) of Mongolia outside a restaurant in Paris, smuggled across the French border in a Mongolian embassy vehicle to Brussels, and then to the Mongolian embassy in Berlin. He was held at the embassy for one night and was tortured by Mongolian agents before he was drugged and boarded in a wheelchair onto a Mongolian MIAT flight to Ulaanbaatar on 18 May. His entry into Ulaanbaatar was not registered by the border police and he was taken to a secret location outside the capital. He was tortured, unsuccessfully, to confess to the murder of the well-known politician Zorig Sanjasuuren, a former Minister of Infrastructure and a recognized champion of the democracy movement (Embassy note: Zorig was murdered in 1998; the case remains unsolved). On 24 May he was registered as a GIA informant and his entry into Mongolia was subsequently registered by the police as 25 May.

During his torture, Enkhbat Damiran was, among other things, forced to sit on a stool for hours, beaten on the liver with a pistol, and was subjected to mock executions. In June 2003, Lodoisambuu Sanjaasuren, a 58-year-old lawyer, was retained by Enkhbat Damiran. In the course of his representation, Lodoisambuu Sanjaasuren videotaped a 36-minute interview of Enkhbat Damiran describing the details of his abduction and torture by the GIA. On 27 September, Channel 25, a Mongolian television station, broadcast the video.

This led to criminal charges against Lodoisambuu Sanjaasuren, a former intelligence agent, and Enkhbat Damiran under article 87(1) of the Criminal Code for revealing State secrets. In November 2004, Lodoisambuu Sanjaasuren was sentenced to 18 months' imprisonment and served his sentence in Prison No. 421 (Amgalan), an ordinary regime facility. The Special Rapporteur visited him in the medical ward on 7 June 2005, where he was under doctors' care for a serious heart

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condition. He alleged that he did not receive specialist medical care and the necessary medication for his condition.

On 8 June 2005, the Special Rapporteur visited Enkhbat Damiran, who is currently detained in Prison No. 413 (Zuunkharaa), a strict regime facility, and is serving a three-year sentence for having revealed State secrets. The murder charges had been dropped as they

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obviously had been fabricated. At the time of the visit, Enkhbat Damiran was examined by an independent doctor. It was apparent that he was in very poor health, had difficulty breathing and was suffering from cirrhosis and bleeding in his urine, among other things, and that he was in need of immediate medical treatment, including appropriate medication. Although he has been sent to the Zaisan Prison Hospital, he receives only cursory treatment there and is repeatedly sent back to Prison No. 413 despite his deteriorating health."

End excerpt from Special Rapporteur's report

18. (SBU) When the case hit the local press decrying the violation of human rights and international law,

Mongolian authorities publicly claimed that the arrest had been conducted with the permission of local law enforcement and INTERPOL, and that no laws or human rights standards were broken. According to French and German authorities, however, the Mongolian agents acted without notifying or obtaining permission from local authorities. In fact, the Governments of France and Germany lodged formal protests with the Mongolian Government, demanding, in both cases, the recall of the Mongolian ambassador. Mongolia eventually recalled its third secretary from Paris and its ambassador (Terbishdagvaa, now minister of agriculture and food) from Berlin (ref c). This incident contributed to the European Union's concerted pressure on Mongolia following the conviction of Enkhbat's lawyer on State Secrets Act charges. In late 2004, the Ambassador also

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twice expressed concern to former Prime Minister Elbegdorj about Sanjaasuren's conviction, and received a promise to look into the case without further response. The head of Mongolia's National Human Rights Commission told Poloff in February 2006 that it had twice formally raised Sanjaasuren's case with the government, but had never received any response.

19. (SBU) Poloff met with Sanjaasuren on March 28. The 60-year old lawyer noted that he had joined Mongolia's intelligence service in 1966; the oath of secrecy he had signed then had twice been used against him in court on State Secrets Act cases, in 1994 and 2004. By 1989, Sanjaasuren had risen to Vice Minister of Justice, then was forced to resign as public pressure mounted on the Communist government (Sanjaasuren said that his reformist inclinations were well known, and that "Communist" elements used the public pressure to maneuver him out). In 1993, Sanjaasuren again began to work for GIA. He told Poloff that superiors ignored his information about corruption by senior officials in the MPRP government. In December 1993, he held the first of several press conferences publicly airing the charges and naming names. He was convicted under the State Secrets Act in May 1994 and sentenced to three years imprisonment, which was reduced on appeal to 70 days. During the Democratic Coalition government from 1996-2000, he became head of the prison administration and worked to bring about improvements in the dire conditions. (Comment: Despite the sub-standard conditions in prisons, Sanjaasuren is credited by observers with implementing significant improvements over the even worse situation that prevailed when he took charge.) After the MPRP regained power in 2000, Sanjaasuren said he was dismissed by "the communists." He then became a criminal defense attorney.

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10. (SBU) Sanjaasuren told Poloff he was permitted to meet with Enkhbat only three times, but made a 36-minute tape of Enkhbat's allegations of torture and coercion to testify falsely during one of the visits. In July 2003, the lawyer first told Mongolian news media about Enkhbat's claims, but did not reveal the existence of the tape. He said he made multiple copies of the videotape and sent them to then Prime Minister Enkhbayar, then Justice and Home Affairs Minister Nyamdorj, the Prosecutor General, the Supreme Court, and Civil Will MP S. Oyun (Zorig's sister). One month later, after receiving no reaction from any of these, he paid TV 25 \$450 to air the tape; Sanjaasuren wryly noted that this used up almost all of the \$500 retainer Enkhbat had paid him. After airing the allegations, Sanjaasuren said, he was surveilled by GIA agents and his travel was restricted. In September 2004 (note: as the Coalition government was being formed), the case was transferred to the prosecutor's office. In

November 2004, a two-day closed trial of Sanjaasuren and Enkhbat was held in Gants Hudag detention center. Sanjaasuren, who acted as his own defense attorney, said the charges were confusing and contradictory -- and were premised on Enkhbat's alleged enrollment as a GIA agent in May 2003, which made disclosure of the allegations an offense under Article 87 of the Criminal Code. Sanjaasuren told Poloff the trial seemed pre-scripted, and said he had heard from sources just before the trial that he would be sentenced to three years imprisonment, which turned out to be the verdict.

¶11. (SBU) Echoing statements he made in a March 2006 press interview, Sanjaasuren linked Enkhbat's abduction from France to an MPRP effort to link then Democratic Party head M. Enkhsaikhan to Zorig's murder in advance of the 2004 elections. Enkhbat's claim is that the GIA tried to get him to testify falsely that he had been ordered to murder Zorig by a DP-linked businessman who is a childhood friend of Enkhsaikhan. (Comment: As it turned out, the fallout from Enkhbat's abduction, along with the outcry over criminal libel cases brought by then Justice Minister Nyamdorj against Gundalai and another prominent DP politician (ref b), helped to energize opposition voters, and was one reason the MPRP suffered sharp losses in the June 2004 parliamentary elections.)

¶12. (SBU) Asked about his imprisonment, Sanjaasuren said he had benefited from the esteem with which both guards and prisoners held him in, due to the reforms he had implemented during his time as head of the prison administration. Sanjaasuren said he had not had to share a cell, and he had been permitted to cook his own meals using food sent by his family. He was not beaten or otherwise abused, although medical care was inadequate. Since his release in August 2005, Sanjaasuren said he had been unable to find work; he is no longer legally able to work as a lawyer. Companies he has approached have shied away from him due to his past. However, he said, he had been retained two days previously as a consultant by a Mongolian filmmaker who plans a film on Chinggis Khan. Sanjaasuren said he believes at least three of his children have suffered because of his case, including a son who is a prison guard and was transferred to a remote prison, and another son who is a bank official who was accused of failure to cooperate with police in a bank fraud case, and was arrested for two days in early March and beaten.

What the Embassy Has Done and Will Do

¶13. (SBU) The Embassy has long called publicly and privately for reform of the State Secrets Act, a key step in ensuring transparency in Mongolian governance.

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Along with other donors, the Embassy prioritized the issue during the GOM-External Partners "technical meeting" in early March (ref c). Amendment of the State Secrets Act figures prominently in our lobbying package prepared for the forthcoming session of the State Great Hural, a package which lists measures and actions that the government and parliament should take in order to demonstrate their commitment to fighting corruption. We have also urged new legislation to create a Freedom of Information Act regime and the repeal of the criminal libel offense, which is used to intimidate, and sometimes imprison, journalists and other government critics (2004 and 2005 State Department Country Report on Human Rights Practices in Mongolia). All these reforms also figured prominently in the anti-corruption action plan initiated by former PM Elbegdorj. It remains to be seen if the new

government will follow through. Post intends to continue to encourage democratic reform, by advocating with the government and working with civil society. In this regard, we are soliciting proposals (for funding from our Democracy Small Grants fund) from civil society for projects to call public attention to the need, and to outline an approach, to revise the State Secrets Law.

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